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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

HARDING SECURITY ASSOCIATES, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:10cv1039-AJT/TRJ
MISSION ESSENTIAL PERSONNEL, LLC	)	(Jury Trial Requested)
Defendant.	)	

COMPLAINT

Summary of Action

1. Plaintiff Harding Security Associates, Inc. ("HSA") entered into a contract with Defendant Mission Essential Personnel LLC ("MEP") to provide over two dozen of HSA's professional employees to perform counterintelligence ("CI") and human intelligence ("HUMINT") services to support the U.S. military and coalition leaders in Afghanistan.

2. MEP took advantage of its relationship with HSA to identify these highly specialized and skilled professionals, affirmatively contact all of HSA's employees performing work in Afghanistan pursuant to the contract between HSA and MEP, encourage them to submit their resignations to HSA, and offer to pay them the same salary and benefits (plus a signing bonus) to continue working in the same jobs, but as MEP employees.

3. MEP's wrongful conduct constitutes tortious interference with HSA's employment agreements with its employees. MEP has knowingly induced HSA's employees to breach their contracts, which will cause HSA to suffer both monetary and irreparable harm. Accordingly, HSA seeks injunctive, monetary and declaratory relief as a result of MEP's wrongful conduct.

Parties

4. HSA is a Virginia corporation with its principal place of business at 1430 Spring Hill Road, Suite 525, McLean, VA 22102. HSA is a wholly-owned subsidiary of, and is sometimes referred to as, Six3 Systems, Inc.

5. MEP is an Ohio limited liability company with its principal place of business at 4343 Easton Commons, Suite 100, Columbus, OH 43219.

Jurisdiction and Venue

6. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 in that this action is between citizens of different States and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

7. The relief requested is specifically authorized by 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

8. Exercise of personal jurisdiction over Defendant is proper pursuant to VA. CODE ANN. §§ 8.01-328.1(A)(1) and 8.01-328.1(A)(4). This action arises from Defendant's transaction of business with Plaintiff in the Commonwealth of Virginia. Upon information and belief, Defendant also transacts regular and substantial business in the Commonwealth, deriving substantial revenue therefrom.

9. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(a) and 1391(c).

Facts Common to All Counts

A. HSA's Business and Mission

10. HSA provides strategic solutions to U.S. Government agencies in the Intelligence, Defense, and Civilian communities. HSA's mission is to provide subject matter expertise and strategic solutions for the United States' most sensitive national security agencies and critical missions.

11. HSA is comprised of a professional staff with substantial experience in: personnel, document, and physical security; homeland security; CI; HUMINT; measurement and signature intelligence; biometrics, research and technology; and critical infrastructure protection and force protection.

12. HSA has operational personnel stationed around the world in support of its customers' missions. HSA's personnel include security specialists, intelligence analysts, counterintelligence professionals, forensic technicians, systems engineering, chief scientists and thought leaders, and senior program advisors.

B. MEP's and HSA's Contracts to Provide Intelligence Support Services

13. The U.S. Government awarded MEP Contract No. W911W4-09-D-0103 (the "Prime Contract") on or about October 2009 to provide CI and HUMINT support services to the U.S. military and coalition leaders in Afghanistan. On information and belief, the Prime Contract initially provided that the performance period was scheduled to end on September 27, 2010.

14. On or about October 22, 2009, MEP and HSA entered into Subcontract No. MEP-09-0012 (the "Subcontract"). Under the Subcontract, HSA provides intelligence professionals to work as integrated teammates with the U.S. military and coalition forces in Afghanistan and assist the U.S. and coalition military leaders in making real-time CI and HUMINT assessments.

15. The Subcontract is a cost plus fixed fee, indefinite delivery/indefinite quantity ("CPFF, ID/IQ") contract. MEP authorizes and funds all work under the Subcontract by issuance of task orders.

16. On or about November 9, 2009, MEP issued Task Order No. MEP-09-0012-TO1 (the "Task Order"). Under the Task Order, MEP authorized and funded HSA to provide a total of twenty-eight (28) intelligence analysts, CI specialists, senior CI specialists, and one CI Senior Advisor

in Afghanistan in support MEP's Prime Contract. The period of performance under the Task Order is September 28, 2009 through September 27, 2010.

17. HSA has met all performance requirements under the Task Order. MEP has never suggested otherwise or taken any action to terminate the Task Order for deficient performance.

C. HSA's Employment Agreements

18. HSA has written employment agreements with each of its employees who are deployed to Afghanistan to perform intelligence support services under the Task Order and other contracts.

19. Each of HSA's employees in Afghanistan signed a general employment agreement upon commencement of his or her employment by HSA (an "Employment Agreement"). Each employee also signed a letter agreement upon his or her deployment to Afghanistan, which identifies the employee's position, compensation, and other terms pertaining to the person's deployment outside the contiguous U.S. (an "OCONUS Letter Agreement").

20. Each Employment Agreement contains a provision requiring that, for a period of six months following the last day of employment by HSA, the employee will not "directly or indirectly, compete with the Company by providing the same or similar services as those provided by Employee during the course of his employment with the Company."

21. Each Employment Agreement also includes a "Non-Piracy of Clients" provision in which the employee agrees that he will not, for a period of six months following employment, "directly or indirectly, solicit or accept business competitive to the Company from any person or entity who or which was a client of the Company at the time of Employee's last day of employment and/or a one-year period prior thereto, from whom or which Employee solicited or accepted business on behalf of the Company."

22. Each Employment Agreement also states "that during the course of his employment and for a period of six (6) months immediately following the termination of his employment, however such termination is affected [sic], Employee will not, either directly or indirectly, interfere with the Company's contracts and relationships, or prospective contracts and relationships, including, but not limited to, the Company's customer or client contracts or relationships."

23. Each Employment Agreement further requires the employee to maintain a strict duty of loyalty to HSA, "promis[ing] to devote his best efforts, experience and talents full time to the performance of his duties for the Company and, accordingly, agree[ing] to refrain from taking advantage, for himself or others, of any corporate opportunities of the Company."

24. Each Employment Agreement provides that the restrictive covenants "are of the essence of this Agreement," and that in the event the employee "violates any restrictive covenant or affirmative obligation," the employee agrees that HSA will suffer irreparable injury, the remedies at law for such breaches are inadequate, and HSA is entitled to injunctive relief against the employee.

25. Each OCONUS Letter Agreement provides that the employee is expected to give two weeks notice prior to any resignation. The employee countersigns the OCONUS Letter Agreement and affirms that he "agree[s] to abide by all ... HSA policies, procedures, and processes."

D. MEP's Wrongful Solicitation of HSA's Employees

26. On information and belief, the Government extended the performance period of the Prime Contract to end on January 31, 2011, four months after the original performance period was set to expire. The Government's extension of the original performance period is often referred to as a "bridge" contract pending the Government's re-competition of the contract.

27. On September 8, 2010, MEP notified HSA in writing that the Task Order would end on September 27, 2010. MEP asked HSA to encourage HSA's employees to seek employment with MEP to continue working under the Prime Contract.

28. On September 15, 2010, MEP sent an e-mail to "all [HSA] employees currently serving on the [Afghanistan] contract per the direction of [MEP] corporate management." MEP informed HSA's employees that as a "business decision" it had decided not to extend HSA's task order during the "contract bridge from 28 Sep 10 – 31 Jan 11." MEP stated that "it is MEP's desire to continue each of you [HSA employees] on the contract." MEP informed HSA's employees that "your salary, seniority, Completion Payment dates, etc. will transfer along with you." MEP also offered to pay each employee a $5,000 "transition payment." MEP asked each HSA employee to submit an online application to "remain on the contract."

29. MEP knew that it was improper for it to solicit HSA employees to continue performing under the Prime Contract, but as MEP employees rather than as employees of HSA. In fact, MEP specifically stated in its September 15 e-mail that, "[f]or legal reasons, any hiring decision [by MEP] can only be made upon receipt of a copy of a Letter of Resignation addressed to HSA." Although MEP understood that it could not hire HSA's employees, MEP nevertheless encouraged all HSA employees to submit their resignations to HSA and assured them that they would be paid the same amount to continue working on the contract as MEP employees.

30. Upon learning of MEP's improper solicitations, HSA delivered a written demand to MEP on September 15, 2010 demanding that MEP cease and desist from all solicitations of HSA's employees. HSA notified MEP that it was prohibited by law from soliciting HSA's employees.

31. MEP responded to HSA's demand to cease and desist from further solicitations of its employees the next day. In its September 16 e-mail, MEP disclaimed any knowledge of any attempt to solicit HSA employees. MEP stated that it was unable to investigate the matter because it allegedly did not have "adequate details regarding the dates, locations, circumstances, etc. that led to your allegation."

32. MEP's response to HSA's demand to cease and desist from further solicitations of its employees was clearly contrived. MEP's broadcast e-mail to all HSA employees specifically stated that it was being sent "per the direction of [MEP] corporate management." The e-mail also reflected that MEP had already decided to "continue each of [HSA's employees] on the contract" and pay them the same salary and benefits. MEP's artifice that it knew nothing about any solicitation evinces its awareness that it was engaging in wrongful conduct by soliciting HSA's employees.

33. On information and belief, HSA employees have or intend to resign as a result of MEP's improper solicitations.

34. HSA will be irreparably harmed if MEP is not enjoined from soliciting its employees. HSA intends to retain all of its employees after the Task Order expires and is in the process of redeploying its employees under the Task Order to other contracts in Afghanistan.

35. As HSA employees leave to perform the same services for MEP that HSA now contracts with MEP to provide, HSA will lose the revenue for their services for the balance of the Task Order. It also loses not only the ability to deploy those employees to work on other contracts, but the revenue such deployments would have generated.

36. HSA's employees are not fungible. They are professionals with highly specialized skills and experience and the highest security clearances (i.e., top secret with access to secret compartmented information). It is very difficult to hire people with the credentials and abilities of HSA's employees under the Task Order. HSA has spent hundreds of thousands of dollars to recruit with the anticipation of retaining these intelligence services employees from a very small hiring pool. It also has expended considerable expense to train them. The loss of any of these employees essentially destroys the value of HSA's investments. Allowing MEP to hire HSA's employees would unjustly enrich MEP at HSA's expense.

37. Even if HSA could find replacements for the employees MEP wrongfully solicits, HSA will not be able to fill positions on other contracts in Afghanistan for which the Government has a current need. HSA would suffer a substantial delay to identify, hire and deploy its employees to Afghanistan. For example, all employees deploying to Afghanistan must process through the CONUS Replacement Center ("CRC"), which takes several weeks, if not longer, to obtain a slot and attend the course. Also, as noted, the hiring pool of qualified candidates for this type of intelligence analyst work is very small.

Count One
(Tortious Interference with Employment Contracts)

38. HSA realleges each every allegation in the preceding paragraphs as though set forth in full.

39. HSA had written employment agreements with its employees performing services under the Task Order when MEP solicited them to resign from their employment by HSA and accept employment by MEP.

40. MEP knew that the HSA employees it solicited were employed by HSA at the time MEP solicited them to resign from their employment by HSA and accept employment by MEP.

41. MEP intentionally interfered with HSA's employment contracts with its employees by affirmatively contacting all of HSA's employees under the Task Order, encouraging them to submit their resignations to HSA, assuring them that MEP would pay them the same amount and provide all of the same benefits as HSA, and offering to pay them an additional $5,000 to continue working in the same jobs, but as MEP employees.

42. By soliciting HSA's employees to resign from their employment by HSA and accept employment by MEP, MEP induced HSA's employees to breach their contract agreements to:

i. refrain from directly or indirectly competing with HSA for a period of six months following their last day of employment by HSA;

ii. refrain from directly or indirectly accepting business competitive to HSA from a client of HSA for a period of six months following their last day of employment by HSA;

iii. refrain from directly or indirectly interfering with HSA's current and prospective contracts and relationships for a period of six months following their last day of employment by HSA;

iv. devote his best efforts, experience and talents full time to the performance of his duties for HSA;

v. refrain from taking advantage, for himself or others, of any corporate opportunities of HSA; and

vi. give at least two weeks notice prior to any resignation.

43. MEP also employed improper methods to interfere with HSA's employment contracts by entering into a contractual relationship with HSA to procure intelligence services and then taking advantage of that relationship to obtain access to and recruit HSA's highly specialized and qualified professionals to perform the exact same jobs, but as MEP employees.

44. On information and belief, at least some of HSA's employees have or will resign from HSA and accept employment by MEP to continue performing the same job. As a result, HSA will suffer both monetary loss and irreparable harm to its current and prospective business relations.

Count Two
(Declaratory Relief)

45. HSA realleges each and every allegation in the preceding paragraphs as though set forth in full.

46. An actual controversy has arisen between HSA and MEP regarding the rights, duties and obligations of the parties.

47. HSA delivered a written demand to MEP on September 15, 2010 demanding that MEP cease and desist from all solicitations of HSA's employees after learning that MEP affirmatively contacted all of HSA's employees under the Task Order, encouraged them to submit their resignations to HSA, assured them that MEP would pay them the same amount and provide all of the same benefits as HSA, and offered to pay them an additional $5,000 to continue working in the same jobs, but as MEP employees. HSA notified MEP that it was prohibited by law from soliciting HSA's employees.

48. MEP has taken the position that it did nothing wrong. MEP denies that is obligated by law to agree to HSA's demands.

49. Therefore, HSA seeks a declaration by the Court of the rights, duties and obligations of the parties.

Prayer for Relief

WHEREFORE, Plaintiff prays:

A. That Defendant be enjoined from:

i. communicating in any way with any HSA employee who is currently providing or who has provided services under the Task Order concerning the HSA employee's possible employment by MEP;

ii. accepting or retaining any application for employment submitted by any HSA employee who is currently providing or who has provided services under the Task Order; and

iii. employing any HSA employee who is currently providing or who has provided services under the Task Order.

B. That the Court award damages in favor of Plaintiff in an amount to be determined at trial but that is no less than $75,000.

C. That the Court award punitive damages in an amount that is no less than three times the actual damages suffered by Plaintiff.

D. That the Court award pre- and post-judgment interest.

E. That the Court award costs and disbursements of this action, including reasonable attorney's fees.

F. That the Court retain jurisdiction for the purpose of enabling Plaintiff to apply to the Court for such further orders and directions as may be necessary or appropriate for the construction or carrying out of any orders made in this action, for the modification of any such orders, for the enforcement of compliance therewith and the punishment of any violations thereof.

G. That the Court award such other relief as is deemed appropriate.

Jury Demand

Plaintiff hereby requests a trial by jury of all issues so triable.

Date: September 17, 2010

Respectfully submitted,

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